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September 29, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 4, 2009

Case Number: TSO-0750

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization 1/ under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be granted.

I. Background

The individual is an applicant for a DOE access authorization. In July 2007, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address his use of alcohol and financial issues. In addition to the PSI, the LSO requested the individual's medical records and recommended a psychiatric evaluation of the individual in April 2008. The DOE psychiatrist opined that the individual presents a history of both Alcohol Abuse and Alcohol Dependence, although he currently diagnosed the individual with Alcohol Abuse. He further opined that the individual has some underlying anxiety and depression in addition to the Alcohol Abuse. The DOE psychiatrist added that the individual's mental illness causes or may cause a significant defect in his judgment and reliability and that the individual has not yet demonstrated adequate evidence of rehabilitation or reformation.

1/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

In March 2009, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) (j) and (l) (hereinafter referred to as Criteria H, J and L respectively). 2/

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the DOE Counsel called three witnesses: the DOE psychiatrist and two personnel security specialists (PSS). The individual presented his own testimony. He brought forth no other witnesses. The DOE and the individual submitted a number of written exhibits prior to and during the hearing.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

2/ Criterion H relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). Criterion L relates in relevant part to information that a person has "[e]ngaged in unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; . . ." 10 C.F.R. § 710.8(l).

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As stated above, the LSO cites three criteria as bases for denying the individual's security clearance, Criteria H, J and L. To support Criterion H, the LSO relies on the DOE psychiatrist's opinion that the individual suffers from Alcohol Abuse, a mental condition which causes, or may cause, a defect in the individual's judgment or reliability. With respect to Criterion H, the LSO also relies on the individual's admission that his physical and emotional health have been affected by his alcohol consumption. Specifically, the individual admitted that he has lost a sense of "right and wrong" after drinking. He also indicated that he developed liver problems and epilepsy due to drinking, having a seizure at DOE in May 2007 after drinking and forgetting to take his seizure medication the night before. This seizure resulted in the individual falling down the steps, cutting his nose and being taken from a DOE facility to a nearby hospital by ambulance. *See* Statement of Charges. To support Criterion J in this case, the LSO relies, *inter alia*, on the following information derived from an Office of Personnel Management (OPM) interview in March 2007 and a 2007 security questionnaire: (1) the individual first began drinking alcohol at the age of 7, continued to drink between the ages of 7 and 18 on the weekends and then his alcohol consumption progressed to a daily habit after graduating from high school, possibly drinking a case of beer a day; (2) a former employer (1990 to 2001) recognized the individual had a problem with alcohol and required him to obtain treatment and sign a Last Chance Agreement; (3) the individual was terminated when he violated the Last Chance Agreement because he became intoxicated on the job; (4) he was charged with Driving Under the Influence (DUI) in June 1999 and admitted that he had consumed at least 12 beers on the evening of the arrest; (5) he abstained from consuming alcohol between 2001 and 2003, but resumed drinking in 2003, limiting his intake to a maximum of six beers a night; (6) he attended Alcoholics Anonymous (AA) meetings, between 2001 and 2003, two to three times per month while still consuming approximately six beers per night; (7) he admitted that his alcohol use has significantly impacted his marriage, work, finances and health and (8) he further admitted that he had been diagnosed with epilepsy, which was caused by his continued alcohol consumption. Finally, to support its reliance on Criterion L in this case, the LSO relies on all of the information cited under Criterion J as well as the following information: (1) the individual's terminations from jobs in 2001 and 2003 due to his alcohol consumption and (2) the individual's credit reports dated February 2007 and June 2007, which indicate several delinquent accounts and collections, a 2006 Chapter 13 Bankruptcy, a state tax lien and past due mortgage payments. *See* Statement of Charges.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health under Criterion H and his alcohol use under Criterion J. The

security concerns associated with Criteria H and J are as follows. First, a mental condition such as Alcohol Abuse or Dependence can impair a person's judgment, reliability and trustworthiness. See Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House. Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. See *id.* at Guideline G. The information set forth above also raises questions about the individual's judgment and reliability under Criterion L.

IV. Findings of Fact

The relevant facts in this case are uncontested. The individual, who has been employed with the DOE since 2006, began drinking alcohol at the age of seven. Transcript of Hearing (Tr.) at 13. His drinking progressed between the ages of 7 and 18, through junior high school and high school, when he drank mainly beer on the weekends. *Id.* After high school, the individual's drinking progressively became a daily habit. *Id.* By the time he reached his 30s and 40s, the individual was drinking up to a case of beer a day. *Id.* at 14. The individual indicated that "[he] was at the point where everyday, instead of drinking coffee or something in the morning, I'd drink a beer or two just to think I was getting myself together." DOE Exhibit 1. In the late 1990s, the individual recognized that he had a problem with alcohol. His employer at the time required him to seek treatment and referred him to its Employee Assistance Program. *Id.* In June 1999, the individual was arrested and charged with DUI. *Id.* The individual admitted that he had been drinking heavily prior to the arrest and that he had failed a subsequent field sobriety test. However, the DUI charge was later dismissed because the arresting officer failed to appear in court. In August 2001, the individual signed a Last Chance Agreement with his employer promising that he would totally abstain from alcohol. The individual was terminated after violating the agreement. He admits to being "intoxicated for six months straight prior to being ultimately fired." *Id.*

From 2001 to 2003, the individual reportedly abstained from alcohol. However, in 2003 the individual decided that he was "strong enough" to resume drinking again, limiting his intake to a maximum of six beers per night. *Id.* In addition, at this time, the individual attended AA, but still continued to consume about six beers per night. He admitted that his alcohol problem has had a significant impact on various aspects of his life, including his marriage, his work, his finances and his health. In 2003, the individual was employed with another company when he was fired for unsatisfactory performance. Tr. at 16. The individual acknowledged that he had been drinking the night before and could not perform his job. With respect to his health, the individual acknowledges that he has been diagnosed with epilepsy which was caused by his continued alcohol consumption. In May 2007, prior to his PSI in July 2007, the individual suffered an epileptic seizure at work. According to the individual, he had consumed alcohol the night before coming to work and had forgotten to take his anti-seizure medication. This seizure at work resulted in the individual falling down the steps, cutting his nose and being taken from the DOE facility to a local hospital by ambulance.

During the individual's July 2007 PSI, the individual also admitted to various financial difficulties caused by his alcohol consumption. On credit reports dated February 2007 and June 2007, the individual possessed several delinquent accounts and collections, a 2006 Chapter 13 Bankruptcy, a state tax lien and past due mortgage payments. The individual indicated that his wife handles his finances and that he was unaware of the status of his financial situation. DOE Exhibit 1.

When the 2007 PSI did not resolve the alcohol-related issues, the LSO referred the individual to a DOE psychiatrist in April 2008 for a forensic evaluation. After examining the individual, the DOE psychiatrist concluded that the individual met the criteria for Alcohol Abuse. He further concluded that the individual has an illness which causes or may cause a significant defect in judgment and reliability.

V. Analysis

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c). 3/ After due deliberation, I have determined that the individual's access authorization should not be granted. I cannot find that granting the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. The Diagnosis of Alcohol Abuse - Criteria H and J

The individual did not dispute that he suffers from Alcohol Abuse under the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, 4th edition, Text Revised (DSM-IV-TR). The pivotal question before me, therefore, is whether the individual has presented convincing evidence that he is adequately rehabilitated from his Alcohol Abuse.

B. Rehabilitation and Reformation

1. The Individual's Testimony

At the hearing, the individual described his current drinking pattern as drinking "a couple of beers here and there." Tr. at 62. He testified that he is not drinking to the extent that he had in the past because he does not want to jeopardize his employment with the DOE. *Id.* The individual stated that he attends AA on his days off from work (Fridays, Saturdays and Sundays) and presented sign-in

3/ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

sheets from AA which show that he attended meetings between May 27, 2009 and July 26, 2009. *Id.* at 64, Indiv. Exh. 1. He further testified that he has an AA sponsor who is willing to support him through the steps of AA. Tr. at 65. The individual added that his wife does not drink and he does not keep beer in his refrigerator. *Id.* at 68. Despite his AA attendance, the individual again acknowledged that he is still drinking alcohol, stating that “[he] slips every now and then” by drinking two or three beers. *Id.* The individual testified that the last time he was intoxicated was sometime around last Christmas when he had six or more beers. *Id.* at 65-66. He further testified that with respect to his drinking, he believes he is doing a lot better than he has in the past. *Id.* at 74. He admitted that he knows that he should be abstaining completely from alcohol, but stated that he “just takes it one day at a time.” *Id.* When questioned about why he abstained from alcohol in 2001 and resumed drinking in 2003, the individual could not offer any reason as to what caused him to resume his drinking or why he continues to drink now. *Id.* at 77, 86. He acknowledged that he last drank alcohol two or three days prior to the hearing. *Id.* at 78. The individual explained that he does not socialize much and does not have a significant support network, other than his wife and his sponsor. *Id.* at 81. With regard to his epilepsy, the individual testified that his last seizure occurred in June 2009 at work. *Id.* at 68. He described that when he suffers a petit seizure, he lays on the ground, but when he has a grand mal seizure as he did a year ago, he stiffens up and falls. *Id.* At the hearing, the individual attempted to explain his financial situation and testified that his delinquencies, collections, lien and past due mortgage payments primarily occurred during periods of unemployment when neither he nor his wife were working or had medical insurance. *Id.* at 70. He further testified that his wife handles all of the finances and could not explain why he had not attempted to resolve even the small debt amounts. *Id.* at 71.

2. The DOE Psychiatrist’s Testimony and Report

The DOE psychiatrist stated in his Psychiatric Report that the individual presents a history of Alcohol Abuse as well as Alcohol Dependence. He further opined that the individual’s mental illness causes a significant defect in the individual’s judgment and reliability. During the hearing, the DOE psychiatrist clarified his diagnosis of the individual and testified that the individual meets the DSM-IV-TR criteria for Alcohol Dependence. *Id.* at 43. In rendering this diagnosis, he concluded the following: (1) the individual has had a long history of alcohol use, up to 12 to 18 beers daily, (2) the individual’s alcohol problems have caused a seizure disorder which requires taking anti-epileptic medication; (3) the individual has had an epileptic seizure at work; (4) the individual has been arrested for DUI and (5) the individual’s alcohol problems have affected his finances and employment. *Id.* at 52-55. He noted further that the individual has a history of financial irresponsibility, poor judgment and reliability and continues to drink while attending AA. *Id.* at 44. In light of these issues, the DOE psychiatrist testified that he would like to see the individual abstain completely for a minimum of one year, but more likely two years in order to achieve rehabilitation. *Id.* at 57. He added that the individual should attend daily AA meetings for the first 90 days, maintain his AA sponsorship, participate in ongoing psychotherapy on at least a weekly basis and perhaps take a medication such as Antabuse. The DOE psychiatrist concluded that in light of the individual’s lifetime of chronic and progressive use of alcohol and its pattern of effects in all areas of his life, the individual’s prognosis is very guarded at this point. *Id.* at 60.

3. Hearing Officer's Evaluation of the Evidence

In the administrative process, it is the Hearing Officer who has the responsibility for assessing whether an individual with alcohol problems has presented sufficient evidence of rehabilitation or reformation. *See* 10 C.F.R. § 710.27. Hearing Officers give deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation, but ultimately exercise their common sense on a case-by-case basis. *See Personnel Security Hearing*, Case No. TSO-0728 (2009).

Regarding rehabilitation, I gave considerable weight to the opinion of the DOE psychiatrist, who opined that the individual should have two years of sobriety, as well as psychotherapy, daily AA attendance and medication, in order to achieve rehabilitation. Moreover, from a common-sense perspective, the following factors militate against granting the individual's access authorization. Although the individual has taken some positive steps toward rehabilitation, including his participation in AA and his acknowledgment that he should abstain from alcohol, it is clear that the individual is only in the early stages of recovery and needs a substantial time of abstinence in order to accomplish rehabilitation. At the time of hearing, the individual was still consuming alcohol, reporting that his most recent drink was consumed two to three days prior to the hearing. In light of the individual's current drinking habits, I am not convinced that the individual is committed to complete abstinence at this time. Although the individual testified that he is married, has a AA sponsor and has attended AA since May, the individual has no other concrete networks such as additional family and church to support his recovery efforts. Moreover, other than AA, the individual has not yet begun psychotherapy or made any other rehabilitation efforts that will assist him in his recovery. Based on the foregoing, I am persuaded by the DOE psychiatrist's opinion that the individual's prognosis is very guarded at this point and that his illness continues to cause a defect in his judgment and reliability. At this time, I find that the individual has not mitigated the security concerns associated with his Alcohol Dependence.

With respect to the Criterion L security concerns which relate to the individual's pattern of financial irresponsibility and job terminations, I believe these concerns are inextricably intertwined with the judgment and reliability concerns found in Criteria H and J. Until the individual has sufficiently mitigated the security concerns associated with his Alcohol Dependence, which affect his judgment and reliability, I cannot find that the individual has sufficiently mitigated the LSO's concerns under Criterion L.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H, J and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the individual has not brought forth convincing evidence to mitigate the security concerns associated

with Criteria H, J and L. I am therefore unable to find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be granted at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: September 29, 2009